

DOCKET FILE COPY ORIGINAL

WILMER, CUTLER & PICKERING

2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

DAVID G. GRAY
DIRECT LINE (202) 663-6299
INTERNET DGRAY@WILMER.COM

100 LIGHT STREET
BALTIMORE, MD 21202
TELEPHONE (410) 986-2800
FACSIMILE (410) 986-2828

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (44) 171 872-1000
FACSIMILE 011 (44) 171 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (32) 285-4900
FACSIMILE 011 (32) 285-4949

FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (49) 301 2022-6400
FACSIMILE 011 (49) 301 2022-6500

April 21, 1998

BY HAND

RECEIVED

APR 21 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

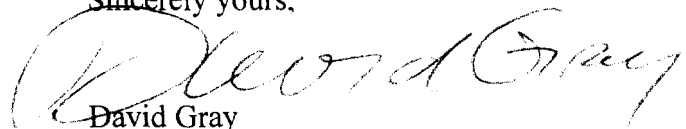
Re: In the Matter of Reallocation of Television Channels 60-69
ET Docket No. 97-157
Reply of ValueVision International, Inc. to Opposition of APCO

Dear Ms. Salas:

On behalf of ValueVision International, Inc. ("ValueVision"), enclosed are an original and eleven copies of ValueVision's Reply to the Opposition filed by APCO to its petition for reconsideration.

If there are any questions concerning the above matter, please communicate directly with the undersigned.

Sincerely yours,


David Gray

Enclosures

No. of Copies rec'd 0 of 11
List ABCDE

RECEIVED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APR 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Reallocation of Television Channels)
60-69, the 746-804 MHz Band)

ET Docket No. 97-157

To: The Commission

REPLY OF VALUEVISION INTERNATIONAL, INC.
TO OPPOSITION OF APCO

Pursuant to 47 C.F.R. § 1.429, ValueVision International, Inc. ("ValueVision"), applicant for construction permits to build full-power television stations on Channel 64, Destin, Florida, and Channel 69, Des Moines, Iowa, hereby responds to the Opposition filed with the Commission on April 6, 1998, by the Association of Public Safety Communications Officials ("APCO").

APCO repeats at length the undisputed point that Congress and the Commission have committed to provide additional spectrum for public safety uses. But nothing in its Opposition even addresses ValueVision's argument that dismissing all pending applications for stations on channels 60-69 -- without regard to whether those applicants can find substitute channels -- is inconsistent with legislative intent and results in inequitable treatment for applicants like ValueVision that reasonably filed for construction permits before the September 1996 cut-off date set by the Sixth Further NPRM.

1. The petitions for reconsideration here do not raise the question of whether the spectrum at channels 63, 64, 68, and 69 is allocated to public safety uses. It will be. Nor do

these petitions raise the issue of whether public safety users will immediately take over that spectrum and displace the services presently allocated to those channels. They will not. As APCO recognizes, the Commission will protect all existing full-power analog licensees and permittees and all new digital permittees from interference by public safety users until the end of the DTV transition period. Nor does ValueVision contest the Commission's decision to require applicants to amend their applications to specify a channel lower than 60 -- should such a channel be available. The only question raised by ValueVision's petition is whether the Commission should, and could consistent with the Balanced Budget Act of 1997 ("the Act") and the Administrative Procedure Act, impose on those applicants who cannot find a suitable lower channel the harsh remedy of dismissing their applications.

2. The legislative history does not suggest that Congress made any differentiation among such applicants based on the channels for which they applied. As noted in the Joint Petition of Lindsay Television, Inc. and Achernar Broadcasting Co., the conference report cited by APCO states that Congress expected that "during the transition, the Commission will ensure that full-power digital and analog licensees will operate free of interference from public safety [users]."^{1/} Given that the same statute simultaneously eased the process of becoming a licensee for all applicants, it is reasonable to infer that Congress intended the same protection to apply to all analog applicants who would become licensees during the transition period -- particularly since the September 1996 the Commission "cut-off" date for analog applications had passed long before enactment of the Act (and thus Congress knew that the

^{1/} Joint Petition at 4.

number of such applications granted during the transition would be limited). Furthermore, the Conference Report states that the Commission must use competitive bidding to resolve “any mutually exclusive applications . . . filed with the Commission prior to July 1, 1997,” House Conf. Rep. No. 105-17, 105th Cong., 1st Sess. 573 (1997) (emphasis added) -- reinforcing the conclusion that the distinction drawn by the Commission here is impermissible.

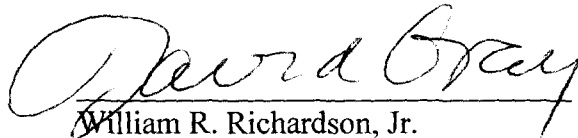
3. As demonstrated in the Joint Petitioners’ Reply to APCO Opposition, APCO’s citations show at most that the operations of public safety users are important and that the Commission has in the past dismissed applications where 1) the demonstrated public interest supports that drastic action, and 2) either Congress has ordered it to do so or the dismissed applicants are afforded replacement spectrum or a transition period. See id. at 3-5. None of these factors is present here.

There has been no showing to rebut the Commission’s previously considered judgment that allocation of new stations to Des Moines and Destin will serve the public interest in promoting additional competitive local service to television viewers in those markets. Nor has APCO ever addressed the public interest in safeguarding the reasonable investment-based expectations of all the parties who filed applications at the invitation of the Commission, rather than just those fortunate enough to have applied for a channel under 60. See ValueVision Petition at 2-3. APCO offers no support for its suggestion that public safety spectrum might be limited in Des Moines, and it does not even mention Destin. Moreover, as noted above, far from implementing the express mandate of Congress, the Commission’s decision to discriminate against applicants for channels 60-69 would be contrary to that mandate. Finally, the Commission has so far declined to provide any assurance of replacement spectrum or to provide

applicants like ValueVision with transitional protection. To the contrary, ValueVision's only request here is for a conditional right to remain on channels 60-69 (if technically necessary) only until the end of the DTV transition period, after which it will be much easier to find a displacement channel within the core broadcast spectrum.

For the foregoing reasons, ValueVision asks that the Commission grant its petition for reconsideration.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David Gray", written over a horizontal line.

William R. Richardson, Jr.

David Gray

Wilmer, Cutler & Pickering

2445 M Street, N.W.

Washington, D.C. 20037-1420

(202 663-6000

Counsel for ValueVision International, Inc.

April 21, 1998

CERTIFICATE OF SERVICE

I hereby certify that one true and correct copy of the foregoing Reply of ValueVision International, Inc. To Opposition of APCO was served on the parties listed below by first class mail, postage prepaid, on this 21st day of April, 1998.

Robert M. Gurss, Esq.
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Counsel for APCO

Ross G. Greenberg, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

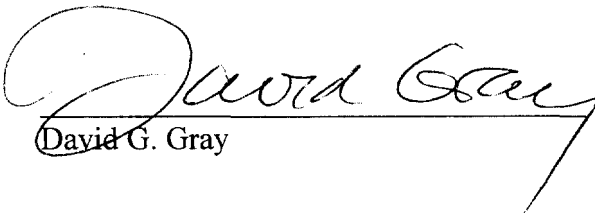
Counsel for Davis Television Fairmont, L.L.C. and Latin Communications Group
Television, Inc.

Margot Polivy
Renouf & Polivy
1532 16th Street, N.W.
Washington, D.C. 20036

Counsel for Achernar Broadcasting Company

Gene A. Bechtel
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 260
Washington, D.C. 20036

Counsel for Lindsay Television, Inc.


David G. Gray